

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MARK WADE WINN, #01867684,
Petitioner,

v.

LORIE DAVIS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Div.,
Respondent.

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CIVIL CASE NO. 3:18-CV-166-S-BK

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to [28 U.S.C. § 636\(b\)](#) and *Special Order 3*, this case was referred to the United States magistrate judge for pretrial management. For the reasons that follow, this action should be **DISMISSED WITHOUT PREJUDICE** for failure to comply with a Court order.

I. BACKGROUND

On March 8, 2018, the Court issued a second deficiency order, advising Petitioner that if he intends to proceed with this federal habeas corpus action, he must pay the required \$5.00 filing fee or submit a proper request to proceed *in forma pauperis*. [Doc. 5](#). The deadline for Petitioner's response was April 5, 2017. As of the date of this recommendation, however, Petitioner has not responded to the Court's order, nor has he sought an extension of time to do so.

II. ANALYSIS

Rule 41(b) of the Federal Rules of Civil Procedure allows a court to dismiss an action *sua sponte* for failure to prosecute or for failure to comply with the federal rules or any court order. [Larson v. Scott](#), 157 F.3d 1030, 1031 (5th Cir. 1998). "This authority flows from the court's inherent power to control its docket and prevent undue delays in the disposition of pending

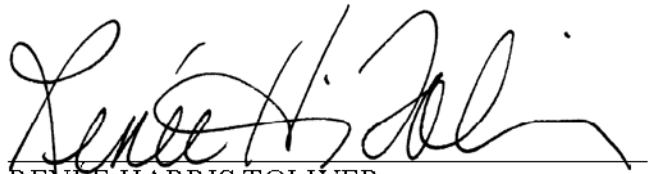
cases.” *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)).

Petitioner has been given ample opportunity to respond to the Court’s order. He has impliedly refused or declined to do so. Therefore, this action should be dismissed without prejudice for failure to comply with a Court order. *See* [FED. R. CIV. P. 41\(b\)](#) (an involuntary dismissal “operates as an adjudication on the merits,” unless otherwise specified).

III. RECOMMENDATION

For the foregoing reasons, this action should be **DISMISSED WITHOUT PREJUDICE** for failure to comply with a Court order.¹

SO RECOMMENDED April 30, 2018.

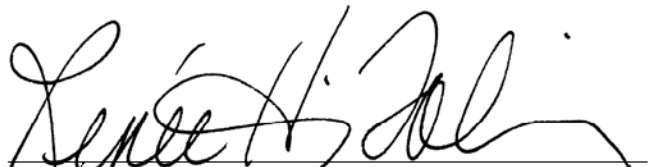


RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

¹ There is a one-year statute of limitations for filing habeas corpus petitions in federal court, [28 U.S.C. § 2244\(d\)](#), that applies to this petition or any other Petitioner may file. A review of Petitioner’s prior filings reflects that the instant habeas petition was filed after the one-year limitations period expired. *See Winn v. Davis*, No. 3:16-CV-2361-N-BN, [2017 WL 5125898](#) (N.D. Tex. Sept. 21, 2017), recommendation accepted, [2017 WL 5070422](#) (N.D. Tex. Nov. 3, 2017) (dismissing Petitioner’s prior federal habeas petition as time barred).

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996), *modified by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from 10 to 14 days).


RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE